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2004-026872

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**OF**

**SUMMER GARDENS**

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of  
Summer Gardens

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- Exhibit B - Conceptual Plan
- Exhibit C - Covenants and Restrictions
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**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
SUMMER GARDENS**

This Declaration of Covenants and Restrictions of the Summer Gardens "Community" ("Declaration") is made this 3<sup>rd</sup> day of SEPTEMBER, 2004, by JMS Investments, LLC (the "Declarant").

**WITNESSETH:**

(RECITALS)

WHEREAS, Declarant is the Owner of real estate in Johnson County, State of Indiana, more particularly described in Exhibit "A" attached and made a part hereof comprised of approximately 10.740 acres to be known as Summer Gardens Subdivision and also designated "Real Estate" in this Declaration.

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with public streets, common areas, with identification signage, and with complimentary landscaping at the entranceway and landscaping and fencing on certain of the perimeters for the benefit of such residential community, to be known as "the Summer Gardens Subdivision" (Exhibit "A" realty);

WHEREAS, Declarant desires to provide subject to this Declaration a common interest community which addresses commonly owned real estate, their maintenance and other maintenance obligations and the finances to honor these and other community obligations. To this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each Owner of all or part thereof; and

WHEREAS, Declarant deems it desirable to accomplish these tasks, to create an agency to which shall be delegated and assigned the powers of supervising, maintaining and administering any common areas and maintenance expense areas detailed herein, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the common interest of the Owners of the Real Estate, and all parts thereof: and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the Indiana Code 23-17-1, et seq., under the name "The Summer Gardens Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions:

NOW, THEREFORE, Declarant, as Owner of the Real Estate hereby declares that the Exhibit "A" Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth.

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**RECITALS**

The Recitals are incorporated herein as if set out in full.

**ARTICLE I  
DEFINITIONS**

**Section 1.** The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

(a) "Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended;

(b) "Applicable Date" or "Turnover Date" shall mean and refer to the date determined pursuant to Article IV of this Declaration; and refers to the time at which the Declarant relinquishes control of the governance of the Association as detailed on Article IV.

(c) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;

(d) "Association" (HOA) shall mean and refer to Summer Gardens Homeowners Association, Inc., an Indiana corporation organized under Indiana Code 23-17-1, et seq., which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;

(e) "Board" or "Board of Directors" shall mean and refer to the governing body of the Association elected, selected or appointed as provided for in the Articles, Bylaws and this Declaration;

(f) "Bylaws" shall mean and refer to the Code of Bylaws of the Association, as the same may be amended from time to time;

(g) "Committee" shall mean and refer to the "Summer Gardens Architectural Control Committee", the same being the committee or entity established pursuant to Article X, of this Declaration for the purposes therein stated;

**SPECIAL NOTE**

Some of this subparagraph is a direct result and is impacted upon by the Zoning Commitments attached as Exhibit X that appear in the minutes of the Bargersville, Indiana town council dated March 11, 2003 (hereinafter referred to as "Zoning Commitments") which is attached hereto for informational purposes only and not subject

to amendment under Article XVI hereof. Zoning Commitments may be permissible to be modified or terminated under the rules of the Town of Bargersville, Indiana.

(h) "Common Areas" denominated by such title on recorded plats of this community or by identifying language in this Declaration which will ultimately be transferred in legal title to the HOA by the Declarant and thereafter be commonly owned by the HOA Members. Unless specifically identified as "limited common areas" in the plat or identifying language herein, the common areas are general common areas.

The HOA at all times herein has rights as respects these common areas to regulate the use thereof, to make and/or remove improvements thereon, including but not limited to landscaping, to provide utilities thereto with the attendant responsibility to care for and maintain same.

The Declarant expects to convey legal title to Common Areas to the HOA subject to easements of record, as soon after the Applicable Date as any mortgage thereon is satisfied in full but reserves the right to transfer such title earlier in Declarant's sole discretion. The Board, after the initial Board is replaced, is empowered to accept title subject to a mortgage if it is satisfied with assurances of payment thereof by Declarant. Reference to the Conceptual Site Plan (Exhibit "B") depicts and confirms a plan for several general common areas as follows:

(i) COMMON AREA "A" at the entrance into the community off of County Road 144 onto Jacinta Place in the northwest corner thereof. A segment of this common area will have installed upon it a wall-type subdivision identification sign with complementary landscaping. The Declarant reserves the right, without the obligation, to provide water and/or electricity to this area which if installed will be metered with the user charge for utility service to be a common expense.

(ii) COMMON AREA "B". This designated "Lake" and the Lake in Common Area "C" which is designed to be wet serves the surface water drainage needs of the subdivision. Notwithstanding that these Lake(s) are designed to be wet, the Declarant disclaims any obligation to maintain a certain water level in this Lake and in the Lake in Common Area "C". A gazebo and some park-type benches will be installed in the area around the Lake on or before the last Lot in the subdivision being sold to promote contemplative recreation.

(iii) COMMON AREAS "C" AND "D". These are open space general common areas with uses thereof to be determined and regulated by the HOA.

(iv) LIMITED COMMON AREA. Common Area "C" located to the rear of Lots 10 and 11 in the subdivision which is also labeled "Lake" and is part of the drainage system of the subdivision shall be regulated by the HOA but restricted in its use to the owners of residences of these Lots and their invitees. Access for maintenance by the HOA to this common area shall be within the Drainage and Utility Easement between Lots 10 and 11.

(i) "Common Expenses" shall refer to expenses of administration of the HOA and for their exercised rights and obligations detailed in the Definitions "Common Areas" and the expenses associated with the Common Maintenance Areas and shall also include the HOA obligations as respects Lot maintenance in Article VII herein.

(j) "Community or Project" refers to the Summer Gardens Subdivision as it is developed and as it continues to exist after the Applicable Date.

(k) "Conceptual Site Plan" (Exhibit B) is the Conceptual Site Plan for the Real Estate and for the Summer Gardens Community.

(l) "Declarant"/"Developer" shall mean and refer to JMS Investments, LLC, an Indiana limited liability company, and any successors and assigns of JMS Investments, LLC whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title, to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant. SO LONG AS COMMUNITY DEVELOPMENT, INC. (CDI) IS THE EXCLUSIVE BUILDER, THEY SHALL BE THE DESIGNATED DECLARANT EXCEPT FOR THE OBLIGATIONS IN ARTICLE III HEREOF.

(m) "Dwelling Unit" shall refer to one-half of a double separated by a party wall from the other half of a double with each Dwelling Unit located on its own platted Lot; one-half of a double with each Dwelling Unit located on its own platted Lot; one-half located on a \_\_\_\_\_(A) Lot and the other half on a \_\_\_\_\_(B) Lot. (The blank is a number as shown on the PLAT);

(n) "Lot" means any plot of ground designated as such upon the recorded Final Plat of Summer Gardens, and upon which one (1) Dwelling Unit is constructed or is to be constructed. When Lot is used, it shall be deemed to include the Dwelling Unit, if any, located thereon;

(o) "Common Maintenance Areas a/k/a Maintenance Expense Areas." Certain aesthetic, informational and other amenities influenced by the natural features of the Real Estate have been used in the development design to differentiate this community from other communities. As a consequence thereof, easements have been created on the recorded plat that reserve to the HOA certain rights and responsibilities.

Illustrative of same are the following in the Summer Gardens Community:

(i) The care and maintenance of landscaping, fencing, possible signage and utilities installed by Declarant in common maintenance areas appropriately designated as easements on the final recorded plat for this community detailed further hereafter.

(ii) The landscaping, possible signage and utilities within the Sign and Landscape Easement depicted on Exhibit B with Declarant reserving the right to do all or none of such aesthetic improvements.



(iii) The care and maintenance of all common areas now or hereafter installed by Declarant as depicted on Exhibit B and as described herein and labeled on recorded plats.

(iv) The care and maintenance of the detention pond labeled "Common Area "A" and "C".

(v) The maintenance of the perimeter fence installed by Declarant in the subdivision in the 20 foot Drainage and Utility Easement and Sign Easement depicted on the final plat of the community. With the exception of the subdivision frontage on County Road 144 which Declarant reserves the right not to fence, the balance of the subdivision (excluding the east side hereof which borders commercial uses) shall incorporate a 42 inch-high black coated-chain link fence with the east perimeter to incorporate a 6 foot-high wooden fence.

(vi) Amenities within the general common areas heretofore detailed. Declarant reserves the right, but not the obligation, to provide these areas with amenities other than the obligatory gazebo and park benches around the Lake in Common Area "B" for passive enjoyment and complementary landscaping. Any maintenance and replacement thereafter shall be a common expense of the HOA.

(vii) The cost of street lighting within the community which is typically accomplished under a lease arrangement.

**SPECIAL NOTE RE: MAINTENANCE EXPENSE ITEMS**

The ownership of any landscaping and/or fencing shall be in the name of the HOA.

The cost of any and all of the above obligations are inclusionary in the definition "Common Expenses."

(p) "Member" means a Member of the Association.

(q) "Mortgages" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;

(r) "Owner" shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;

(s) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;

(t) "Properties" shall mean and refer to the Real Property described in Exhibit A attached hereto;

(u) "The Real Estate" shall mean and refer to the parcel of real estate in Johnson County, Indiana, described in Exhibit A attached to this Declaration and subject thereto, as referred to in the first recital clause of this Declaration, and defined therein as the Real Estate;

The Exhibit A Real Estate, when platted, shall be known as Summer Gardens and is to be comprised of 20 divisible parcels denominated as "LOTS" within which a duplex is proposed to be built with two residential units therein separated by a party wall.

(v) "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time (see Article XI and Exhibit C referred to therein);

(w) "Rules and Regulations" – rules and regulations relative to the use, occupancy, operation and enjoyment of the Real Estate and the Common Areas therein.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

**ARTICLE II  
DECLARATION**

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred and occupied subject to the Restrictions as Covenants running with the Real Estate. The Owners of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Committee and of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant, the Committee, the Association, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

**ARTICLE III  
OBLIGATIONS OF DECLARANT**

Section 1. Agreement to Construct. Declarant has constructed or provided for, or will prior to the Applicable Date construct or provide for, the following:

(a) a storm drainage system for the Real Estate, which will include a Detention Area heretofore described, inlet pipes, open ditches, swales, pipes and other structures and drainage courses.

(b) the installation, in the Common Maintenance Areas and/or designated easements of the subdivision identification signage, fencing and landscaping at the single entranceway off of County Road 144;

**ARTICLE IV  
ASSOCIATION; MEMBERSHIP; VOTING; FUNCTIONS**

**Section 1. Membership in Association.** Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and membership will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Association.

**Section 2. Voting Rights.** The Association shall have the following classes of membership, with the following voting rights:

(a) **Class A.** Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine and as amplified in the By Laws if such determination is unavailable, but in no event shall more than one (1) vote be cast with respect to any such Lot. Otherwise, in the absence of a determination of multiple Owners, the vote shall be equally split between the multiple Owners. Attendance at properly called Association meetings by one Member of a jointly titled Lot shall vest in such sole attending Member the entire one (1) vote.

(b) **Class B.** Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Association which, so long as Community Development, Inc. is the exclusive builder in Summer Gardens, is Declarant's designee. Each Class B Member shall be entitled to four (4) votes for each Lot of which it is the Owner on the recorded subdivision plat of the Real Estate (which is one and the same as the Lot configuration on the conceptual plan [Exhibit B]) on all matters requiring a vote of the Members of the Association. **THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE FIRST TO OCCUR OF**

(i) THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS IS DELIVERED TO THE RESIDENT AGENT OF THE ASSOCIATION, OR

(ii) THIRTY (30) DAYS AFTER THE DATE WHEN THE CLASS A VOTES EQUAL THE CLASS B VOTES.

(iii) TEN (10) YEARS AFTER THE DATE OF RECORDATION OF THIS DECLARATION.

THE DATE APPLICABLE TO THE ABOVE IS HEREINAFTER REFERRED TO AS THE APPLICABLE DATE.

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B Member shall be entitled to one, (1) Class A membership for each Lot owned.

The total possible vote for Class A Members prior to the Applicable Date as shown on the conceptual plan is 40.

**Section 3. Functions.** The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation of the Article III Section 1 matters and, to pay any other necessary expenses and costs related thereto, and to perform such other functions as may be designated for it to perform under this Declaration.

**ARTICLE V  
BOARD OF DIRECTORS**

**Section 1. Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a Member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a person appointed by Declarant as provided in Section 2 of this Article V.

**Section 2. Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: David J. Baird, Chad A. Young, George Weidman and Barry W. Renner, or a representative of that entity designated by them (herein referred to as the "Initial Board"), who has been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial Board shall hold office until the first annual meeting of the Members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a Member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above,

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to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original Member thereof or as a Member thereof appointed by Declarant to fill a vacancy, shall be deemed a Special Member of the Association and an Owner solely for the purpose of qualifying to act as a Member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

**Section 3. Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

**Section 4. Term of Office, Vacancy, and Number of Directors after the Applicable Date.**

(a) **Term.** Subject to the provisions of Section 2 of this Article V, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the Members occurring on or after the Applicable Date provided herein. After the Applicable Date, each Member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified.

(b) **Number of Directors after Applicable Date.** The number of Directors to serve on the Board after the Applicable Date shall be a minimum of three (3) with a maximum of seven (7).

(c) **Vacancies.** Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

**Section 5. Removal of Directors.** A Director or Directors, except the Members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners

nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);
- (b) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;
- (c) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;
- (d) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (e) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours by reasonable pre-arrangement;
- (f) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (g) paying any other necessary expenses and costs in connection with the Common Areas; and
- (h) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the Bylaws, or the Act.

**Section 7. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) to purchase, lease, or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors.
- (c) to employ legal counsel, architects, Contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;
- (e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Association;
- (g) to promulgate, adopt, revise, amend and alter from time to time such additional Rules and Regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) including but not limited to charging uniform fees for the use of Common Areas and to set and charge fees for late payment of assessments and fines for violations of Restrictions and Covenants and Rules and Regulations as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and
- (h) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, and Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service, provided that such easements are located within or are coextensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded.
- (i) shall have the right to convey title of Common Area to Lot Owners to correct any overlaps or encroachments.

(j) to borrow funds to perform its duties for the benefit of the Association and Owners and use the assessments as collateral, if collateral is required, to secure such financing.

**Section 8. Limitation on Board Action.** After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 per year without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary;

(a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier as acknowledged coverage;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 9. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 10. Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

**Section 11. Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director



shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 12. Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

**Section 13. Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Association, until the Applicable Date. Declarant may, at its option, engage a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

#### **ARTICLE VI REAL ESTATE TAXES; UTILITIES**

**Section 1. Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot.

**Section 2. Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit including utilities (if any) to community identification signage shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

#### **ARTICLE VII ENCROACHMENTS AND EASEMENTS IN COMMON AREAS**

If by reason of inexactness of construction, settling after construction, or for any other reasons, any Common Areas encroach on any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Areas.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, in the Common Areas and serving his Dwelling Unit

**ARTICLE VIII  
PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of any Dwelling Unit upon the Tract and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

**Section 3. Destruction by Fire or other Casualty.** If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right of Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions herein stated, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party, the Board of Directors of the Corporation shall elect an arbitrator for the refusing party. The cost of the arbitrators shall be borne equally by the parties.

**ARTICLE IX  
MAINTENANCE OF COMMON AREAS/LOTS/DWELLING UNITS**

**Section 1. Maintenance of Common Area.** Maintenance of the Common Area, unless the same is otherwise the responsibility or duty of Owners of Lots shall be provided by the Corporation, however, this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system.

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**Section 2. Maintenance by Corporation Relative to Lots/Dwelling Units. Re: Lot.** The Corporation shall maintain the lawns on the Lot including fertilizing (a minimum of 2 times per year) and mowing of the grass when necessary, but only in an area designated to be grass at the time of transfer of title to a Lot from the Declarant (but not replanting or reseeding of the grass), and the care, fertilizing, trimming, removal and replacement of trees and shrubs planted by the Declarant without any duty to water any such planting and trimming shall be determined by the Board and not exceed one trimming per year. It shall not include the care and maintenance of shrubs, trees which are not planted by Declarant, flowers or other plants within the Lot. The Association may provide snow removal (but no ice removal) if funding exists for the removal of snow from driveway and sidewalks or the Dwelling Units within the Lot if in the Board's sole determination the accumulation of snow justifies such removal. Any plantings made by Owners in and around sidewalk and driveway areas on which snow removal or de-icing are performed by the HOA are planted as the Owner's sole risk with no liability to the HOA.

**Re: Dwelling.** The Board, in its sole discretion, shall determine the need for the exterior painting of the Dwelling Unit and shall control the color, quality and selection of the paint used but the Owner is to provide such paint and painting to the Dwelling Units exteriors. The Board shall also clean the gutters at least once a year.

**Section 3. Maintenance of Individual Lots.** Except as otherwise noted above, each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon not provided by the Association in a good, clean and sanitary condition, with an appearance which is complementary to the Subdivision. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition with an exterior appearance up to the general standards of the Summer Gardens Subdivision, the Corporation may perform any work necessary and charge the Owner thereof for such cost which shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property in like manner to liens created for Assessments hereunder. Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work permitted herein.

**Section 4. Damage to or Abuse of Common Area or Areas to be Maintained by the Association Under Subsection 2 Hereof.** If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, or invitee or other occupant or visitor of the Owner, damage is caused to Common Areas or repairs and maintenance are accelerated relative to the Association's obligations and some maintenance or repairs are required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien in like manner to the lien under Assessments may attach to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Corporation.

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items,

including, but not limited to, access to any easements reserved, granted or created by any Summer Gardens Subdivision plat or of any portion of the Real Estate for such purposes.

**ARTICLE X  
ARCHITECTURAL STANDARDS**

Nothing, including any fence, deck, retaining walls, recreational equipment (including basketball goals), or any structure, storage shed, doghouse or other improvements, shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Committee has been obtained pursuant to Section 1 below.

THIS ARTICLE SHALL NOT APPLY TO THE ACTIVITIES OF THE DECLARANT, NOR TO CONSTRUCTION OR IMPROVEMENTS OR MODIFICATIONS TO THE COMMON AREAS BY OR ON BEHALF OF THE ASSOCIATION.

THIS ARTICLE MAY NOT BE AMENDED WITHOUT THE DECLARANT'S WRITTEN CONSENT SO LONG AS THE DECLARANT OWNS ANY LAND SUBJECT TO THIS DECLARATION.

**Section 1. Architectural Control Committee.** There shall be, and hereby is, created and established the "Summer Gardens Architectural Control Committee" ("Committee") which shall have exclusive jurisdiction over all construction on any portion of the Properties. UNTIL 100% OF THE PROPERTIES HAVE BEEN DEVELOPED AND CONVEYED TO PURCHASERS in the normal course of development and sale, the DECLARANT, or not more than five, nor less than three, persons designated by it, SHALL CONSTITUTE THE COMMITTEE AND SHALL SERVE AT THE DISCRETION OF THE DECLARANT. THERE SHALL BE NO SURRENDER OF THIS RIGHT PRIOR TO THAT TIME EXCEPT IN A WRITTEN INSTRUMENT IN RECORDABLE FORM EXECUTED BY THE DECLARANT. After the sale of 100% of the Properties, the Committee shall be a standing committee of the Association, consisting of not more than five, nor less than three, persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Committee, then the Board shall be and constitute the Committee.

**Section 2. Approval Process.** The Committee has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the Declarant (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the Committee shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Properties and such Owners and builders shall conduct their operations strictly in accordance therewith. The Committee, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

Prior to any construction on any Lot, the approval of the Committee must be obtained after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Committee.

**Section 3. Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the Committee;

(b) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee;

(c) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee, be contrary to the interest, welfare or rights of all or part of other Owners; or

(d) the removal of trees in the tree preservation easements [Article 1, Section (m)] is contrary to the preservation intent as solely determined by the Committee.

**Section 4. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within fifteen (15) calendar days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. In the event that the Committee fails to provide written notice of approval or to request written notice for additional information within 45 days after submission of all required or requested information, the plans shall be deemed and presumed denied.

**Section 5. No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**Section 6. Variance.** The Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no

variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Committee shall not be considered hardships warranting a variance.

**Section 7. Compliance with Guidelines.** Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the Committee may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by Declarant or the Association.

**Section 8. Non-Liability of Declarant, Committee.** Neither the Declarant nor the Committee shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee or the Declarant does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.

**Section 9. Inspection.** The Committee and the Declarant may inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the Committee, nor any Member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the Declarant, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

**Section 10. No Compensation.** Neither the Committee nor any of its Members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

#### **ARTICLE XI USE RESTRICTIONS/COVENANTS AND REGULATIONS**

The following covenants and restrictions contained in Exhibit C, attached and made a part hereof, concerning the use and enjoyment of the Lots, Dwelling Units, Common Areas (Item 1(h) and Common Expenses (Item 1(i)) are in addition to any other covenants or restrictions contained herein and in the Final Plat(s) of Summer Gardens. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and are enforceable by an Owner, or by the Association. In addition to any other remedies herein provided, present or future Owners or the

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Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof including reasonable attorney fees, but there shall be no right of reversion or forfeiture resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant in and on the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. Declarant shall have the right to remove the same from the Real Estate at any time.

Irrespective of the language in Section XVI (Amendment of Declaration), the following Age Restrictions cannot be amended unless the membership in the HOA unanimously adopts changes thereto.

No one under the age of fifty-five (55) years of age shall be a resident of a dwelling on a Lot other than the following exceptions:

- (A) A live-in caretaker who does not meet the age requirement may be permitted to dwell in Summer Gardens if required due to the resident-owner's poor health or handicap. If the resident dies or no longer needs a caretaker, the caretaker must vacate the residence within thirty (30) days of such occurrence. The Board defined in the Declaration may verify the need of a caretaker in such cases through requirement of an attending physician's statement or other such proof of need.
- (B) A non-ambulatory and/or developmentally disabled dependent child of a resident Lot Owner who meets the age restriction requirement may live with the parent(s) in Summer Gardens regardless of child's age. The child's condition and need is subject to verification by the Board.
- (C) A spouse of a resident Lot Owner who is under the age of fifty-five (55) may live in Summer Gardens as long as the title Owner's spouse is at least fifty-five (55) years of age. The underage spouse may jointly own the Lot in Summer Gardens.

unless mandated otherwise by federal or Indiana law to the contrary herein after enacted.

**ARTICLE XII  
ASSESSMENTS**

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a financial statement of operations by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget.** Annually, on or before the date of the annual or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual or special meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual or special meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the eligible Owners represented at such meeting; provided, however, that in no event shall such annual or special meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks: or savings and loan associations authorized to conduct business in Johnson County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual or special meeting of the Association at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and one hundred ten percent (110 %) of such last approved budget, as a temporary budget.

**Section 3. Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot, provided, immediately following the adoption of the annual budget, each Owner shall be given notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular



fiscal year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in full or proratably in quarterly installments payable in advance based on the date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance other than in quarterly installments commencing on the first day of the first month of each fiscal year. Payment of the Regular Assessment, whether in one payment or in any other manner, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

(a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited: provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) above or (b) shall be made by a cash payment by, or refund to, the Owner or the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfer his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 2 of Article XII hereof prior to the final determination and adoption of the annual budget and Regular

Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same. The initial Regular Assessment is \$ \_\_\_\_\_ per quarterly installment payable in advance.

(c) Notwithstanding anything to the contrary herein concerning Declarant Community Development, Inc. (CDI) not being obligated for Regular Assessment, the Declarant after the Applicable Date will contribute twenty-five percent (25%) of the Regular Assessment for unimproved Lots OR FOR IMPROVED LOTS NOT YET READY FOR OCCUPANCY in Declarant's name, but only if the Applicable Date is not earlier than when Declarant CDI has conveyed eighty percent (80%) of the Lots to others or ten (10) years after the date this Declaration has been recorded, whichever first occurs.

**Section 4. Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the Bylaws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, but not on Lots owned by Declarant, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration. **THE DECLARANT CDI SHALL ONLY BE RESPONSIBLE FOR SPECIAL ASSESSMENTS AFTER THE "APPLICABLE DATE" OCCASIONED BY EXTRAORDINARY REPAIRS TO ORIGINALLY INSTALLED INFRASTRUCTURE, BUT SHALL NOT BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY OTHER OWNERS UNLESS DECLARANT SPECIFICALLY AGREES OTHERWISE IN WRITING.**

**Section 5. Failure of Owner to Pay Assessments.**

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Maintenance Expense Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and special assessments should constitute a lien against the Lots and Dwelling Units

thereon. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mechanic's lien on real property and enforced in like manner as mechanic liens. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other charges due the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly announced or published by Bank One or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion or Johnson County, Indiana selected by the Board) plus 4% but in no event more than the maximum rate allowable under applicable usury laws.

(b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

(c) In addition to the remedies above stated for failure to pay assessments, the Association may disqualify a delinquent Owner from his right to vote and to hold office or committee membership in the Association while Assessment are delinquent in addition to charging a late fee of \$23.00 per month of delinquency to among other things, cover the administrative expense of addressing the delinquency and also deny such Member the use of the Common Areas for a period not exceeding 60 days for each separate non-payment.

**Section 6. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or Charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant, except as specifically detailed in subsection 3(c) herein. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant to another Person, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Association against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

**ARTICLE XIII  
MORTGAGES**

**Section 1. Notice to Association.** Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record or in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon written request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

**Section 2. Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement except as such

assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article XII hereof.

## ARTICLE XIV INSURANCE

### Preface

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARTICLE (INSURANCE), THE ASSOCIATION WILL SEEK TO OBTAIN THE COVERAGES INDICATED SUBJECT HOWEVER TO THE LIMITATION OF WHAT'S AVAILABLE FROM INSURANCE CARRIERS FOR SUMMER GARDENS COUPLED WITH CONSIDERATION AS TO EXCEPTIONS AND EXCLUSIONS OF COVERAGE, AND DEDUCTIBLES TO MAINTAIN CONTROL OF THIS ITEM OF COMMON EXPENSE.

THE ASSOCIATION WELCOMES THE OWNERS' INPUT REGARDING THE BEST COVERAGE FOR THE BEST PRICE AND WILL SUPPLY OWNERS WITH A SUMMARY FROM THE ASSOCIATION'S INSURANCE PROFESSIONAL WHICH WE URGE OWNERS TO SHARE AND CHALLENGE THEIR OWN INSURANCE PROFESSIONAL FOR RECOMMENDATIONS AS TO THEIR REQUIRED INSURANCE AND ANY ADVISABLE ADDITIONAL COVERAGE (GAP OR OTHERWISE) FOR DIRECT PURCHASE BY OWNERS.

**Section 1. Casualty Insurance.** The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Association as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty on the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere

stated herein, and for the benefit of the Owners. The proceeds shall be used or distributed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

**Section 2. Public Liability Insurance.** The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Association, the Board of Directors, Officers, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, the Declarant and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

**Section 3. Other Insurance.** The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

**Section 4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Association shall provide such Owner or mortgagee with a description of the insurance coverage maintained by the Association.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the Members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

**Section 5. Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

**ARTICLE XV  
CASUALTY AND RESTORATION**

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of these areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing these areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas and/or maintenance expense areas (if any) to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

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Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

**ARTICLE XVI  
AMENDMENT OF DECLARATION**

**Section 1. Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.

(d) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy percent (70% in the aggregate of the votes of all Owners). In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(e) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Article XIV of this Declaration with respect to casualty insurance to be maintained by the Association, or (3) the provisions of Article XV of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each or any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the Declaration.

(f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Johnson County, Indiana, and such amendment shall not become effective until so recorded.



**Section 2. Amendments by Declarant Only.** Notwithstanding the foregoing or anything else contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if Declarant records the modification in the Office of the Recorder of Johnson County, Indiana, and if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future Perform) function similar to those performed by such agencies or entities, to subject additional property to these restrictions, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) change the substance of one or more covenants, conditions, terms or provisions hereof but (A) does not materially increase the obligation(s) of any Owner under any covenant, condition, term or provision without such Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 or behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

**ARTICLE XVII  
ACCEPTANCE AND RATIFICATION**

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the Bylaws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance of the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended, or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited

and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the Bylaws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

**ARTICLE XVIII  
NEGLIGENCE**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

**ARTICLE XIX  
BENEFIT AND ENFORCEMENT**

**Section 1. Covenants Appurtenant to Land.** These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at any time after fifteen (15) years a majority of the then Owners of the Lots in this subdivision agree to change (or terminate) said covenants in whole or in part and on the condition that an instrument to that effect signed by the Lot Owners voting in favor of such change has been recorded; provided, however, that no change or termination of said covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

**Section 2. Prosecution of Violations.** It shall be lawful for the Association, the Committee (as to matters for which it has responsibility) or any other person owning any real property situated in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating, or attempting to violate any covenant, conditions, provisions or restrictions contained herein either to prevent such person or persons from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. All costs of litigation and attorneys' fees resulting from violation of these covenants and restrictions shall be the financial responsibility of the Lot Owner or Owners found to be in violation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenant shall not be considered as a waiver of the right to enforce any covenant herein, thereafter. Notwithstanding the foregoing, any violation of these covenants or the Declaration may be waived by a majority of the then Owners of the Lots in this subdivision.

The Association may as respects an Owner who violates these restrictions and/or Rules and Regulations, after written notice to the Owner detailing the nature of the violation with a

time period established by the Association to cure or conform, disqualify the voting rights and right to hold office while the violation continues and may further in the Board's sole discretion, impose a fine, in whole or in part, with each day after the cure period being a separate violation at a chargeable rate of up to one hundred dollars (\$100.00) per violation per day. This fine, if not paid when required, will be processed in the same manner as assessments.

**ARTICLE XX  
NON-LIABILITY OF JOHNSON COUNTY DRAINAGE AUTHORITY**

The Johnson County Drainage Authority shall not be responsible in any way for, and disclaims any liability for, any defect in any plans, specifications or other materials approved by it in connection with the storm drainage system for Summer Gardens Community, or for any defects in the construction thereof.

**ARTICLE XXI  
MISCELLANEOUS**

**Section 1. Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the Bylaws, or to comply with any provision of this Declaration, the Articles, the Bylaws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

**Section 2. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.

**Section 3. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the Bylaws and each shall be enforceable to the greatest extent permitted by law.

**Section 4. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**Section 5. Interpretation.** The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

**Section 6. Delegation of Use of the Common Areas.** Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Areas to members of his family, his tenants or contract purchasers who reside on any Lot

**Section 7. The Plat.** The Final Plat of Summer Gardens has been recorded as Instrument #~~2004-025936~~ in the Office of the Recorder of Johnson County, Indiana.

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IN WITNESS WHEREOF, JMS Investments, LLC, by its duly authorized Manager, Declarant herein, has executed this Declaration on the day and year first hereinabove set forth.

JMS Investments, LLC

By: Michael G. Shotts  
Michael G. Shotts, Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF JOHNSON )

Before me, a Notary Public in and for said County and State, personally appeared Michael G. Shotts, the Manager of JMS Investments, LLC, who acknowledged the execution of the above and foregoing instrument for and on behalf of said limited liability company, and, who having been duly sworn, stated that any representations contained therein are true.

WITNESS my hand and Notarial Seal this 13TH day of SEPTEMBER, 2004.

Myla S. Scott  
Notary Public



MYLA S. SCOTT  
Printed

My County of Residence:

HANCOCK

My Commission Expires:

7-20-09

This instrument prepared Raymond Good, Attorney At Law

LOCKE REYNOLDS LLP  
201 North Illinois Street, Suite 1000  
P.O. Box 44961  
Indianapolis, IN 46244-0961  
317-237-3800

EXHIBIT "A"

A part of the Northeast Quarter of the Northeast Quarter of Section 2, Township 12 North, Range 3 East and a part of the Southeast Quarter of the Southeast Quarter of Section 35, Township 13 North, Range 3 East of the Second Principal Meridian in Johnson County, Indiana, described as follows:

Beginning at a point on the north line of said Section 2 South 89 degrees 48 minutes East 41.00 feet from the Northwest Corner of said Northeast Quarter of said Northeast Quarter; thence North 00 degrees 24 minutes East 81.50 feet; thence South 89 degrees 48 minutes East 390.00 feet to the west line of Long (Deed Record 232 page 637 Johnson County Recorder); thence along the line of Long the following three courses 1) South 02 degrees 32 minutes 20 seconds West 6.00 feet; 2) South 89 degrees 48 minutes East 120.30 feet; 3) North 33 degrees 00 minutes 35 seconds East 52.07 feet to the center of State Road #144; thence along said center line South 58 degrees 52 minutes East 68.76 feet to the west line of the State of Indiana (Inst. #1999-031390 Johnson County Recorder) the next three courses are along the State of Indiana; 1) South 31 degrees 03 minutes 39 seconds West 24.92 feet; 2) South 59 degrees 21 minutes 51 seconds East 168.20 feet; 3) South 70 degrees 20 minutes 24 seconds East 83.41 feet; thence South 09 degrees 13 minutes 31 seconds West 125.10 feet; thence South 71 degrees 24 minutes 11 seconds East 199.88 feet; thence South 67 degrees 01 minutes 30 seconds East 36.84 feet; thence South 00 degrees 27 minutes East 9.90 feet; thence South 70 degrees 53 minutes East 135.00 feet; thence South 00 degrees 46 minutes 27 seconds East 125.58 feet; thence South 89 degrees 27 minutes West 1140.93 feet; thence North 00 degree 00 minutes East 445.53 feet to the place of beginning, containing 10.7 acres, more or less, and subject to easements and rights of way.



## EXHIBIT C

### SUMMER GARDENS COVENANTS AND RESTRICTIONS

The words defined in the Declaration of Covenants and Restrictions for Summer Gardens are likewise defined herein.

**Section 1. Declarant's and the Association's Right to Perform Certain Maintenance and Removal.** In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements, or remove any unauthorized item or structure, situated thereon in accordance with the provisions of these Restrictions and the provisions of any recorded plat of the Real Estate, the Declarant, until the Applicable Date, and, thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean, remove or perform such other acts as may be reasonably necessary, to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such plat. The cost thereof to the Declarant or the Association shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Declarant nor the Association, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

**Section 2. Ditches and Swales and Erosion Control.** It shall be the duty of the Owner of any Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

**Section 3. Drilling.** No oil or water drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any Lot.

**Section 4. Ground Elevations and Erosion Control.** It shall be the Lot Owner's responsibility to maintain and comply with all building and site finish ground elevations and erosion control as finally required and approved by the Johnson County Drainage Board and the Department of Planning and Zoning as evidenced upon the final construction plans for the development of this subdivision.

**Section 5. Insurance Impact.** Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of



the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

**Section 6. Landscape Easements.** There are strips and areas of ground shown titled as various easements on the Final Plat for the Real Estate which are hereby reserved for the use of owners of lots to the extent and limited for the purposes set forth in the Declaration and for the use of Declarant and Association for the installation, maintenance, repair and replacement of the matters detailed in Item (1)(h) requiring maintenance. Except as installed and maintained by lot owners, pursuant to the requirements of the Declarations, or by Declarant and the Association, no permanent or other structure (except walls, sidewalks and fences otherwise permitted hereby or by the Declarant and approved by the Committee) shall be erected or maintained on said strips and areas by the owner of any lot subject to any such "Landscape Easement", and the owners of such lots affected by any such "Landscape Easement" shall take and hold title to their lots subject to the foregoing rights of the Declarant and the Association and shall not do or permit to be done anything which will obstruct or interfere with or remove any installations or landscaping made by the Declarant or Association in any such "Landscape Easement". The foregoing grant of rights to the Declarant shall not impose an obligation on the Declarant to undertake such maintenance unless it elects to do so.

**Section 7. Maintenance of Lots and Improvements.** It shall be the responsibility of each Owner to prevent the occurrence of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot except the mowing and fertilizing are the responsibility of the HOA as detailed in the Declaration. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the forgoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. No waste shall be committed in any Dwelling or on any Lot. Each Owner shall:

- (i) Remove all debris or rubbish;
- (ii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (iii) Cut down and remove dead trees;
- (iv) Where applicable, prevent debris and foreign material from entering drainage areas; and
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

**Section 8. Occupancy and Residential Use of Partially Completed Dwelling House Prohibited.** No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties, however, if an Occupancy Permit from government is involved the issuance thereof shall be deemed substantial completion.

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**Section 9. Occupants Bound.** All provisions of the Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations adopted pursuant thereto.

**Section 10. Prohibition of Used Structures.** All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

**Section 11. Quiet Enjoyment.** No portion of the Properties shall be used, in whole or in part, for the storage or any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners or allow any such noise or disturbance to be made on his or her Lot, including any noise by the use of musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other machines or equipment. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way obnoxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties. Also, excessive grass clippings from the mowing of lawns or other lawn/tree rubbish will not be allowed to be left on any street within the development.

**Section 12. Residential Use.** The Properties shall be used only for single family residential purposes; provided, however, that such restriction shall not apply to any Lot or part thereof or any other part of the Properties at any time owned by the Association which constitutes a part of the Common Areas and upon which no Dwelling Unit is located.

**Section 13. Sidewalks.** Sidewalks shall be constructed as required by the sidewalk plan approved by the Johnson County Plan Commission, which construction shall be the responsibility of the lot owner upon whose lot the sidewalk is to be constructed, provided, however, that any Common Area sidewalks shall be constructed by the Developer as designated on the final development sidewalk plan. All sidewalks to be constructed by lot owners shall be completed at such times as the driveway on the lot is constructed. All sidewalks shall be poured concrete, with expansion joints, such construction to be perpetual and continuous along the street frontages and across the driveway of each Lot. In the event any Owner, or parties with whom Owner contracts for work on the Owner's Lot, causes damage to a sidewalk or street curb such Owner shall be responsible for repairing said damage.

**Section 14. Sales Office.** To the extent deemed necessary or desirable by Developer, Developer shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold lot or on any Common Area in the subdivision.

**Section 15. Sanitary Waste Disposal.**

A. **Nuisances.** No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

B. **Construction of Sanitary Sewage Lines.** All sanitary sewage lines on the Lots shall be designed, constructed, and installed in accordance with the provisions and requirements of Johnson County and these Restrictions.

C. **Connection Requirements for Sanitary Sewers.** All homes shall have sewers directly connected to the Indianapolis Sanitation System.

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Exhibit C - Page 4

**Minutes - Town Council  
March 11, 2003 - Zoning Commitment**

On behalf of the owner and developer, Mr. Huddleston made the following zoning commitments.

1. The real estate will be used as a residential development for persons age 55 and over; no one under age 55 can own and live in the development with the exception of a caregiver for or spouse of the owner or a disabled child of an owner.
2. The development will consist of twenty (20) buildings, with two (2) units to a building, for a total of forty (40) units. The units will be 1300 - 1600 square feet of living area with 100% wrap around brick on the front, except for the gables. Each unit will have a two (2) car attached garage. The garages will be heated with door openers. The driveways and sidewalks will be of concrete, and each unit will have a concrete patio.
3. The inside features of each unit will include extra wide doors and hallways for future mobility needs, handicap accessible bathrooms and no steps in the unit, with options for handicap equipped kitchen. The landscaping will be ten (10) to fifteen (15) scrubs and bushes and one (1) tree per unit.
4. There will be a maintenance package for the units with will include lawn care, snow removal and gutter cleaning. There will also be a complete home security system with an emergency button feature and the developer will install streetlights.
5. There will be a common area with a gazebo by a large pond and outside front park benches. There will be detention ponds with safety ledges; the ponds will be 8 to 10 feet deep.
6. The entrance/exit to the development from road 144 will include a three lane entrance and a three excell lane.
7. The development will be fenced with a 42" black-coated chain link fence except on the commercial side of the development, where there will be a 6' wooden fence.

EXHIBIT "X"

12

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**OF**

**SUMMER GARDENS**



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**AMENDMENT NUMBER I**

**ORIGINAL INSTRUMENT NUMBER 2004-026872**

**ARTICLE V SECTION 4a**

**Change to:**

**Term. After the Applicable date, each member of the Board of Directors shall be elected for two (2) year alternating terms, beginning with the annual meeting in July 2008. Of the members of the Board of Directors elected in 2008, the three (3) receiving the highest vote total will serve a two(2) year term and the remaining members will serve a one (1) year term in order to establish an alternating pattern. Each director shall hold office throughout his election and until his successor is elected and qualified.**

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."

NAME *Keith Cochran*

Keith Cochran, President	<i>Keith Cochran</i>	May, 29, 2007
Kay Wiseman, Secretary	<i>Kay Wiseman</i>	May 29, 2007

*Gayle K. Young*  
*EXP 12/18/07*  
*Johnson County*

*Gayle K Young*



*PREPARED BY*  
*Keith Cochran*

12

**DECLARATIONS OF COVENANTS AND RESTRICTIONS**

**OF**

**SUMMER GARDENS**



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**AMANDMENT NUMBER 2**

**ORIGINAL INSTRUMENT NUMBER 2004-026872**

**Article XI Paragraph 4**

**Change to:**

**No one under the age of fifty-five (55) years of age and an owner shall be a resident of a dwelling on a lot other than the following exceptions:**

*NOTOBIZED in Johnson Co July 16, 2009*

<b>Keith Cochran, President</b> <i>Keith Cochran</i>	<b>July 16, 2009</b>
<b>Kay Wiseman, Secretary</b> <i>Kay Wiseman</i>	<b>July 16, 2009</b>

*Gayle K Young*

GAYLE K. YOUNG  
Notary Public, State of Indiana  
Johnson County  
My Commission Expires Dec. 18, 2015



**Prepared by Keith Cochran, President**

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."

NAME *KEITH COCHRAN*